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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,794	01/02/2004	Aaron Tabor	JAM770	1508

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EXAMINER

CLARKE, SARA SACHIE

ART UNIT PAPER NUMBER

3749

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/750,794

Applicant(s)

TABOR, AARON

Examiner

Sara Clarke

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 11 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                             |                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/2/04</u> . | 6) <input type="checkbox"/> Other: ____                                                |

## **DETAILED ACTION**

### ***Claim Objections***

Applicant is advised that if claim 2 is found allowable, claim 11 is objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. (US 5962088) in view of Johnson (US 5221565) and Knittel (US 887099).

Tanaka et al. discloses the invention substantially as claimed with the exception of a base and at least one votive cup wrappingly connected to the tree wire.

Johnson discloses a tree and teaches the use of a base 130 for supporting the tree. As disclosed in column 2, line 67, the base 130 is made of plaster of paris to provide weight and support.

Knittel discloses a tree and teaches the use of a votive cup 9 wrappingly

connected to the tree wire by enlarged end 8, which wraps around the votive cup 9 for the purpose of supporting a candle on the tree.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the tree of Tanaka et al. with the at least one votive cup wrappingly connected to the tree wire as taught by Knittel for the purpose of supporting a candle on the tree and the base as taught by Johnson for the purpose of supporting the tree.

Regarding the composition of the bead in claims 5-7 and the votive in claim 10, these recitations present no novel or unexpected result over the bead or the votive disclosed in Tanaka et al. and Knittel. Furthermore, the applicant has not presented any evidence that such differences unexpectedly solve some problem or provide some new result in the art. Therefore, the use of such a bead or votive in lieu of the disclosed bead in Tanaka et al. or the votive in Knittel would have been an obvious matter of design choice to one of ordinary skill in the art, and as such the claims do not patentably distinguish over the applied art at time of applicant's invention as one skilled in the art would have considered the change as an obvious matter of design choice.

Claims 1-7, 10-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charpin (FR 2770804) in view of Weiss (US 5517791), Tanaka et al. (US 5962088), and Knittel (US 887099).

Charpin discloses the invention substantially as claimed with the exception of the base having a votive cavity, a tree wire, a bead, at least one votive cup wrappingly connected to the tree wire, and the base being made of concrete.

Weiss discloses a base and teaches the use of a votive cavity 180 for supporting

a candle, plant, etc. Weiss further teaches making the base 12,14 of concrete because it is recongnized in the art as suitable for the purpose of anchoring the monument. See column 5.

Tanaka et al. discloses a tree and teaches the use of tree wire 17 for the purpose of permitting the shape to be freely changed (column 2, line 37) and a bead 38 for imitating the appearance of blossoms (column 8, line 2).

Knittel discloses a tree and teaches the use of a votive cup 9 wrappingly connected to the tree wire by enlarged end 8, which wraps around the votive cup 9 for the purpose of supporting a candle on the tree.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the tree and base of Charpin with the votive cavity in the base and a concrete base as taught by Weiss for the purpose of supporting a candle or a plant and to anchor the monument, with tree wire and a bead as taught by Tanaka et al. for the purpose of being able to shape the tree and to provide the appearance of a blossom, and the at least one votive cup wrappingly connected to the tree wire as taught by Knittel for the purpose of supporting a candle on the tree.

The subject matter of Charpin and Weiss, a headstone, would logically have commended itself to an inventor's attention in considering his problem since both Charpin and Weiss and applicant's invention relate to stone-like bases supporting a decorative object.

Regarding the composition of the bead in claims 5-7 and the votive in claim 10, these recitations present no novel or unexpected result over the bead or the votive disclosed in Tanaka et al. and Knittel. Furthermore, the applicant has not presented

any evidence that such differences unexpectedly solve some problem or provide some new result in the art. Therefore, the use of such a bead or votive in lieu of the disclosed bead in Tanaka et al. or the votive in Knittel would have been an obvious matter of design choice to one of ordinary skill in the art, and as such the claims do not patentably distinguish over the applied art at time of applicant's invention as one skilled in the art would have considered the change as an obvious matter of design choice.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka et al. (US 5962088), Johnson (US 5221565), and Knittel (US 887099) as applied to claim 1 above, and further in view of Day (US 3144375).

Tanaka et al., Johnson, and Knittel disclose the invention substantially as claimed with the exception of a concrete base.

Day discloses a tree and teaches the use of a concrete base 10 for the purpose of anchoring the tree. See column 2, last full paragraph.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the tree of Tanaka et al., Johnson, and Knittel with a concrete base as taught by Day for the purpose of anchoring the base.

#### ***Allowable Subject Matter***

Claim 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 is allowed.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to


applicant's disclosure. Hilker (US 4076490), Ollom (US 3806723), Murphy (US 2503587), Houle (US 2216440), Protz (US 1514788), Wengenroth (US 255902), and Wagner (DE 20114877U1) disclose various artificial tree or candle holder arrangements.

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sara Clarke whose telephone number is (703)308-1388. The examiner can normally be reached on Mon-Fri, 8:30-1:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached at (703)308-1935. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sara Clarke   
Primary Examiner  
Art Unit 3749

June 27, 2004